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Paliotta General Contractors, Inc. and International Union of Operating Engineers, Local Union No. 66, A, B, C, D, O & R, AFL-CIO. Case 6-CA-31632

March 19, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND WALSH

Upon a charge filed by the Union on September 26, 2000, the General Counsel of the National Labor Relations Board issued a complaint on December 27, 2000, against Paliotta General Contractors, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 12, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On February 14, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 16, 2001, notified the Respondent that unless an answer was received by the close of business on the third day following the receipt of the letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.¹

¹ The Acting General Counsel requests that the Board order the Respondent to "reimburse any discriminatee (any unit employee) entitled to a monetary award in this matter for any extra federal, state and/or local income taxes that would or may result from their receipt of a lump sum backpay distribution in one tax year that represents a backpay award for a multi-year period that would have encompassed several tax years." The Acting General Counsel's proposed order would represent a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1985), enf'd. 762 F.2d 990 (2d Cir. 1985). We believe that the

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Monroeville, Pennsylvania, has been engaged as a contractor in the construction industry. During the 12-month period ending August 31, 2000, the Respondent, in conducting its business operations, purchased and received at its Fredricktown, Pennsylvania jobsite, goods and services valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania, and purchased and received goods and services directly from other enterprises located within Pennsylvania, each of which other enterprises had received those goods and services directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Mark Paliotta	President
Tim McCutchen	Foreman
Richard O'Brien	Foreman
John Hayes	Superintendent
Douglas (last name unknown)	Foreman

On or about April 10, 2000, the Respondent, by Mark Paliotta, at the Respondent's Fredricktown, Pennsylvania jobsite, informed its employees that it would cease operations and close down if the Union became their collective-bargaining representative.

On or about July 17, 2000, the Respondent, by Mark Paliotta, at an employee's home near the Fredricktown, Pennsylvania jobsite, advised employees that the Respondent had discharged an employee for speaking on behalf of the Union to other employees.

On or about July 17, 2000, the Respondent discharged employee James T. Phillips because he had formed, joined, or assisted the Union and engaged in concerted activities, and to discourage other employees from engaging in these activities.

remedial question raised by the Acting General Counsel should be resolved after full briefing by the affected parties. See *Kloepfers Floor Covering*, 330 NLRB No. 126 fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act. Further, by the conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging James T. Phillips, we shall order the Respondent to offer him full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent job, without prejudice to seniority or any other rights or privileges previously enjoyed. Further, the Respondent shall make James T. Phillips whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharge of James T. Phillips, and to notify him in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Paliotta General Contractors, Inc., Monroeville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees that it would discharge them for speaking on behalf of the Union or that it would cease operations or close down if the Union became their collective-bargaining representative.

(b) Discharging employees because they formed, joined, or assisted the Union and engaged in concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer James T. Phillips full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent

job without prejudice to seniority or any other rights or privileges previously enjoyed.

(b) Make James T. Phillips whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharge of James T. Phillips, and within 3 days thereafter notify him in writing that this has been done, and that the unlawful conduct will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Monroeville, Pennsylvania, and its jobsite in Fredricktown, Pennsylvania, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 10, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. March 19, 2001

John C. Truesdale,	Chairman
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Wilma B. Liebman,	Member
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Dennis P. Walsh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to discharge you for speaking on behalf of the Union, the International Union of Operating Engineers, Local Union No. 66, A, B, C, D, O, & R, AFL-CIO, and WE WILL NOT threaten that we would cease operations or close down if the Union became your collective-bargaining representative.

WE WILL NOT discharge our employees because they formed, joined, or assisted the Union or engaged in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer James T. Phillips full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make James T. Phillips whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharge of James T. Phillips, and WE WILL, within 3 days thereafter notify him in writing that this has been done, and that the unlawful conduct will not be used against him in any way.

PALIOTTA GENERAL CONTRACTORS, INC.